

March 19, 2004

Via Facsimile to 202-395-3888

The Honorable Joshua B. Bolten
Director
Office of Management and Budget
Eisenhower Executive Office Building
725 17th Street, NW
Washington, DC 20503

Dear Mr. Bolten:

As you are aware, we are in a time of deep budget crisis and already our long-term fiscal commitments are sure to outweigh what we can afford. The Administration's fiscal policies have us on track to triple the national debt in the next ten years, just as the baby boomers are retiring. At any time, but especially in light of our country's ever darkening financial picture, it is vitally important that Congress and the American people have the most accurate cost estimates available when considering any new entitlement program, tax, or other proposed expenditures.

Despite this grave need, as has been made abundantly clear over the past few days, we did not have accurate cost estimates on the Medicare prescription drug bill when it was debated in Congress last year. Over the last few days, several newspapers have reported that Richard Foster, the Chief Actuary of the Medicare program, was told not to provide Congress with his estimates that the Administration's proposed Medicare prescription drug bill would cost between \$500 and \$600 billion over ten years, instead of the \$395 billion relied on by Members of Congress during debate of the bill. As reported, Foster stated that he had reached this higher estimate long before Congress entered its final votes on the proposed bill and that he had wanted to share such estimates with members of Congress.

Because of the actions taken by members of the Bush Administration described above, Congress was missing important information when it debated the Medicare drug bill. This apparently deliberate withholding of information certainly impeded lawmakers' ability to engage in fair debate on the bill and has undermined the legislative process. The free and truthful exchange of information is essential to maintaining our democracy.

The New York Times has reported that some of Mr. Foster's cost estimates were provided to the Office of Management and Budget (OMB).¹ To that end, we ask that you please

¹See "Democrats Demand Inquiry Into Charge by Medicare Officer," *New York Times*, March 14, 2004, A1.

answer the following questions with regard to any versions of legislation considered which led to the passage of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, P.L. 108-173, referred to below as “the prescription drug legislation”:

1. When did you first become aware that Centers for Medicare and Medicaid Services’ (CMS) personnel, whether in the Office of the Actuary or elsewhere, had calculated the cost of the prescription drug legislation as being higher than \$400 billion over the next ten years (“the CMS estimates”)? How did you become aware of this information? What were these estimates?
2. What was the earliest date that any other OMB officials or employees become aware that CMS personnel, whether in the Office of the Actuary or elsewhere, had calculated the cost of the prescription drug legislation as being higher than \$400 billion over the next ten years? How did those officials or employees become aware of this information? What were these estimates?
3. Did you discuss the CMS estimates with anyone? If so, who was involved in these discussions, what was said, and when did these discussions take place?
4. Did you discuss the CMS estimates with anyone in the White House? If so, who was involved in these discussions, what was said, and when did these discussions take place?
5. Did any other OMB officials or employees discuss the CMS estimates with anyone in the White House? If so, who was involved in these discussions, what was said, and when did these discussions take place?
6. Were you or anyone at OMB aware that Members of Congress had requested CMS estimates? If so, when and how did you or any other OMB official or employee become aware of such requests?
7. Did either you or any OMB officials or employees discuss whether the CMS estimates should be released to Members of Congress or to the public? If so, who was involved in these discussions, what was said, and when did these discussions take place?
8. Did you do anything to keep CMS estimates from being released to either Members of Congress or the public? If so, please fully describe what you did and when. Please explain why you chose to take such measures which deprived Members of Congress and the public of such valuable information.
9. Did any other OMB officials or employees do anything to keep CMS estimates from being released to either Members of Congress or the public? If so, please

fully describe what you did and when. Please explain why OMB took such measures which deprived Members of Congress and the public of such valuable information.

10. Did anyone direct you or any other OMB officials or employees not to provide the CMS estimates to lawmakers or the public? If so, please provide the name of such individuals and the date when OMB received such direction. Why were you directed not to share the information with lawmakers or the public?
11. Did you or any other OMB officials or employees discuss the CMS estimates with Thomas Scully, then head of CMS, or any other CMS employees? If such discussions occurred, who was involved in these discussions, what was said, and when did these discussions take place?
12. Did you or any other OMB officials or employees tell Mr. Scully or any other CMS employees not to provide CMS's estimates to Members of Congress or the public? If so, who was involved in these discussions, what was said, and when did these discussions take place? Please explain why OMB took such measures which deprived Members of Congress and the public of such valuable information.
13. Did you or any OMB officials or employees discuss the CMS cost estimates with Mr. Foster or his staff? If so, who was involved in these discussions, what was said, and when did these discussions take place?
14. Did you or any other OMB officials or employees tell Mr. Foster or his staff not to provide CMS's estimates to lawmakers or the public? If so, who was involved in these discussions, what was said, and when did these discussions take place? Please explain why OMB took such measures which deprived Members of Congress and the public of such valuable information.
15. Did you threaten to fire or otherwise sanction Mr. Foster, either directly or through others, if he provided the CMS estimates to lawmakers? If so, how and when? Did you pressure Mr. Foster in any other way, either directly or through others, not to provide the CMS estimates to lawmakers? If so, how and when?
16. Did any other OMB official or employee threaten to fire or otherwise sanction Mr. Foster, either directly or through others, if he provided the CMS estimates to lawmakers? If so, how and when? Did you pressure Mr. Foster in any other way, either directly or through others, not to provide the CMS estimates to Members of Congress? If so, how and when?
17. What was the basis for the Administration's higher estimate for the prescription

drug legislation that was provided in January 2004? Did you or any other OMB officials or employees have discussions about the decision to raise this cost estimate? If so, who was involved in these discussions, what was said, and when did these discussions take place?

18. Describe the general process in which you or anyone at OMB work with individuals in CMS's Office of the Actuary in formulating cost estimates related to legislative and budget recommendations for Medicare and Medicaid.

In addition, please provide copies of all documents related to the above questions. Such documents would include, but not be limited to, copies of all analyses and cost estimates for the prescription drug legislation prepared by CMS that were provided to you or anyone else at OMB, copies of all communications between anyone at OMB and anyone at CMS concerning analyses and estimates of the cost of prescription drug legislation, copies of all documents related to CMS analyses and cost estimates for the prescription drug legislation provided to anyone outside of OMB, and copies of any documents in OMB's possession related to the Administration's action in January 2004 of raising its cost estimate for the prescription drug legislation.

Please provide the requested information and documents by the close of business on Tuesday, March 30, 2004. If you have any questions about this letter, please contact me or have your staff contact Mary Beth Schultz, minority counsel, at 202-224-2627.

Sincerely,

Joseph I. Lieberman
Ranking Member

